

## Committee report

Committee	<b>FULL COUNCIL</b>
Date	<b>20 JUNE 2012</b>
Title	<b>REPLACEMENT CODE OF CONDUCT, COMPLAINT PROCESS AND DISPENSATIONS ARRANGEMENTS</b>
Report of	<b>MONITORING OFFICER</b>

---

### EXECUTIVE SUMMARY

1. Following changes set out in the Localism Act 2011, this report makes recommendations on the proposed local arrangements for a new code of conduct, complaint process and the arrangements for handling requests for dispensations to speak when a member has an interest.
2. The proposed code of conduct and complaint process is recommended by the Ethical Standards Committee.
3. At the time of writing this report the detailed regulations on the implementation of the code of conduct and the complaint process are still awaited. These may impact on some of the recommendations. If they are issued in advance of the Council meeting a suitable update will be published as soon as practicable.

### BACKGROUND

4. The Localism Act 2011 retains the duty to promote and maintain high standards of conduct but has introduced the following changes to the ethical standards arrangements for all local authorities:
  - (a) The abolition of the Standards Board for England (this ceased to operate as from 30 March 2012).
  - (b) The abolition of a national code of conduct. It will be for local authorities to adopt their own local code of conduct.
  - (c) No statutory requirement for a standards committee.
  - (d) The need for a locally defined process to follow when considering complaints against members who are alleged to have failed to follow the locally agreed code of conduct.

- (e) The need for designated independent persons to be available to liaise with members about whom complaints have been made and with the monitoring officer with regard to complaints.
  - (f) Parish and Town Councils will be responsible for adopting their own local codes of conduct. Principal local authorities (such as the Isle of Wight Council) will be responsible for considering complaints against parish and town councillors but any sanction for any breach will be a matter for those town or parish councils.
  - (g) Limited sanctions are available for the local authority to impose where there is found to be a breach, confined primarily to censure, although depending on the circumstances it may be possible for the relevant group leader (assuming the member in question is a member of the group), to take some action (for example removal from positions or committees).
  - (h) The need to continue to maintain a register of interests. These need to be available for inspection at the offices of the Council and also electronically on the Council's website.
  - (i) The need to disclose pecuniary interests. These will be defined in forthcoming regulations from the Secretary of State as "disclosable pecuniary interests".
  - (j) The fact that failure to complete the register of disclosable pecuniary interests or take part in consideration of matters to which such interests apply will be a criminal offence.
5. The existing national code of conduct has been in place for some years and is generally understood, it is suggested that the Isle of Wight Council's new code of conduct should follow this, as far as is possible. However, it should make little reference to the issue of interests as these will be covered by the awaited regulations. The legislation makes it clear that breaches of this nature will be a criminal matter for police to investigate.
  6. The yet to be published regulations will deal with what are termed as "disclosable pecuniary interests" which are required to be included in members' registers of interests. If a matter relating to them is being considered by the Council then the member can take no part in that consideration. Failure to follow this will be a criminal offence and will be a matter for the police. Once the regulations are available detailed briefings will be provided to members.
  7. However the Act does allow the Council to determine its own register of interests. It is suggested that the current register (attached at Appendix A to this report) is maintained as members are familiar with this and it is in keeping with this Council's stated aim to be open and accountable to the public. This may need to be reviewed, in due course, once the regulations relating to disclosable pecuniary interests are issued. It is also suggested that this register should be completed within 28 days of taking office and updated within 28 days of any change (as at the moment).

8. In addition to the registers of interests being available for inspection at the offices of the Council there is now a requirement that all such registers are also published on the Council's web-site (along with those from the parish and town councils). We will investigate how this can be achieved whilst maintaining the existing ability for members of the Isle of Wight Council to complete theirs on line if they choose.
9. Despite the need for a register of interests (either a disclosable pecuniary interest or our own local one) the legislation is not explicit as to whether a member should declare an interest at the meeting and leave the meeting when an item in which they have an interest is being discussed. Accordingly it is suggested that this is included in the new local code and in the Procedure Rules (our standing orders) to avoid a member being able to participate in a debate where there may be a potential conflict of interest. The requirement to leave the meeting will only apply where the member has a disclosable interest after the member has participated as a member of the public (where members of the public are permitted to participate). This will mean that a member will have the same rights of address as a member of the public - but must then leave the room.
10. The Isle of Wight Council's current code of conduct has a local variation in that it requires members to register all gifts and hospitality offered regardless of value (whether accepted or not), whereas the current national code only has a requirement to register such gifts and hospitality if they have a value in excess of £25 and the member has a potential prejudicial interest for three years from the date of the gift and hospitality in any council business affecting the giver. These issues have caused complications in the past, and in reality most gifts and hospitality are of a very minor nature and Council processes have tied up resources in recording these very low (or even nil value) items. It is therefore suggested that there be a new provision requiring only those of a value in excess of £50 to be registered and that - subject to the regulations - such a gift no longer automatically creates a wider interest to be declared, though members will be briefed on the implications of the Bribery Act.
11. A suggested revised code is attached at Appendix B (to this report) for approval by Council. This code is recommended to the Council by the Ethical Standards Committee.
12. Mindful that many Isle of Wight Councillors are also parish/town councillors and to assist the public in understanding the code on the Island the Ethical Standards Committee have also recommended to all parish/town councils on the Island the same code. To date a number of them have adopted this version of the code, or indicated their intention to do so.
13. When a new code is agreed this will be placed in the Council's constitution to replace the existing one and will therefore sit alongside the various other procedures within the constitution, including the protocols for dealing with planning and licensing matters and for member/officer relations.
14. In constructing the process for dealing with complaints, the proposals set out in Appendix C (to this report) have taken into account the experience of the last few years of operating the system that was specified by legislation.

15. The key differences with the proposed procedure (compared to the current arrangements are):
- (a) On receipt of a complaint, the member against whom a complaint has been made is confidentially supplied with a copy of the complaint and asked to provide a summary of their views on the matter before it is considered any further.
  - (b) The monitoring officer determines what initial action to take, for example whether there is no further action or whether an investigation should be considered. She may seek the views of a Designated Independent Person and must do so before a complaint is referred to an investigation.
  - (c) If there is an investigation and the investigating officer determines that there has been no breach of the code of conduct then the matter stops there and there is no hearing as there would be at present.
  - (d) If the investigating officer determines that there has been a breach then the matter has to be considered by the Council. It is important to stress that the only legislative options are for such matters to be considered by Full Council or a committee of the Council. As the newly established Appeals Committee has responsibility for a range of appeal matters of a similar nature, it is proposed that this is the preferable committee to undertake final hearings. This committee will have the necessary training and experience.
  - (e) The only sanctions available are:
    - (1) Censure;
    - (2) Referral to the relevant group leader for action;
    - (3) Publication of findings;
    - (4) Local resolution for example agreement to further training or offering an apology.
16. Reference has been made to designated independent persons. The Council is required to appoint at least one (although the detailed regulations are awaited) and this person is available to provide independent advice to the Monitoring Officer and the elected members. Given the potential for conflicts of interest to arise it is suggested that in the first instance five such people are appointed by full Council following a recruitment process that will need to take account of the final regulations. These five will also receive quarterly reports from the Monitoring Officer on complaints received and actions taken.
17. It is anticipated that the regulations will require that the Designated Independent Persons are appointed following advertisement, and that the existing independent members of the Ethical Standards Committee can be appointed for the first year provided that they are not members of the Committee on 1 July 2012. As the Designated Independent Persons need to be in place by 1 July it is suggested that an advertisement for these roles be placed on the Council's web site on 21 June, and that the Monitoring Officer, in consultation with the group leaders, be delegated authority to make the appointments for the first year.

18. Currently the independent members of the Ethical Standards Committee receive an annual allowance of £301 and an additional £30 for each case they consider. It is suggested that the new Designated Independent Persons be allocated the same annual allowance of £301, but that they receive no further payment. This will be an interim payment and will need to be considered by the Independent Remuneration Panel as part of their annual review. The outcome of this review may mean this allowance either increasing or decreasing but it will be backdated to the date of appointment.
19. If Council agrees to the various recommendations within this report there will also be no further role for the Ethical Standards Committee and it would therefore be necessary for Council to formally disband this Committee as from midnight on Friday 29 June. This will allow the existing Committee to complete the matters that are still outstanding as well as ensure that the existing independent members can be appointed (for the first year) as Designated Independent Persons should they apply, thus retaining their expertise and experience.
20. In terms of the process for dealing with complaints against parish and town councillors it is further suggested, in order to mirror as far as practicable the existing arrangements, that the Isle of Wight Association of Local Councils be invited to appoint up to four parish or town councillors who the monitoring officer, and the Appeals Committee if necessary, can consult with before making decisions relating to complaints against parish/town councillors.
21. The Act also requires that the Council has arrangements in place for considering requests for dispensation to speak or vote on a matter where they have an interest. Currently this function rests with the Ethical Standards Committee. As this committee will have no further role it is suggested that the responsibility for considering any such requests again be delegated to the Appeals Committee.
22. Whilst there have been very few requests for dispensations in the past the legislation is explicit in that dispensations can only be granted for the following reasons:
  - (a) That the number of members with an interest that prohibited them from participating in any particular business would be so great a proportion of the Council or committee transacting the business as to impede the transaction of the business;
  - (b) That without the dispensation the representation of different political groups on the council or committee transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business;
  - (c) That granting the dispensation is in the interests of persons living in the authority's area;
  - (d) That without the dispensation each member of the authority's executive would be prohibited from participating in any particular business to be transacted by the authority's executive; or
  - (e) That it is otherwise appropriate to grant a dispensation.

## STRATEGIC CONTEXT

23. As these changes are required by legislation there is no direct link to the Council's corporate priorities other than these arrangements will assist with the overall governance arrangements by ensuring that members are clear as to the code of conduct they are expected to follow and this process is understood by the public.

## CONSULTATION

24. The proposals contained within this report have been discussed on an informal basis with all members of the Ethical Standards Committee and also with group leaders of the Council. Drafts of the proposed code and complaints process have been sent to all members of the Isle of Wight Council and all parish/town Councils on the Island along with the Isle of Wight Association of Local Councils.
25. Feedback received to date has been included.
26. The Ethical Standards Committee has also considered the suggested code of conduct and the procedure for dealing with complaints and has made the following recommendations:

### RESOLVED TO RECOMMEND TO FULL COUNCIL :

- (i) THAT the proposed Code of Conduct as at Appendix B to this report be adopted. (This code was also recommended by the Committee to the parish/town councils)
- (ii) THAT the proposed process for dealing with complaints as at Appendix C to this report be implemented.
- (iii) THAT (subject to the detailed regulations on process to be followed and any interim arrangements) five Designated Independent Persons be appointed;
- (iv) THAT the Isle of Wight Association of Local Councils be invited to appoint four parish/town councillors who the Monitoring Officer or Appeals Committee can consult when considering complaints against parish/town councillors.

## FINANCIAL / BUDGET IMPLICATIONS

27. The proposals will replace existing member code of conduct and complaint procedures and do not, in themselves, create any additional financial implications for the Council. The proposed complaints procedure is a streamlined process and therefore should reduce administration which will help to achieve savings already identified in democratic services.

## LEGAL IMPLICATIONS

28. Under the Localism Act 2011 the Council has a duty to promote good ethical standards, to agree a code of conduct for members and to have in place a process for dealing with alleged breaches of the code of conduct. Although detailed regulations are still awaited, the proposals within this report comply with the new legislative requirements, along with any existing ones.

## EQUALITY AND DIVERSITY

29. An equality impact initial screening has been undertaken and as this process replaces an existing one but the initial access to the process (i.e. the route by which a complaint is submitted) remains unaltered there are no negative equality and diversity impacts.
30. The proposed new code retains a provision that discrimination is still a breach of the code, thus potentially improving the awareness of equality issues.

## OPTIONS

31. The range of options being brought for consideration are:
- (a) Approve the new Register of Interest as attached at Appendix A to this report;
  - (b) Approve the new Code of Conduct as attached at Appendix B to this report;
  - (c) Welcome the adoption by the parish/town councils on the island of the same Code of Conduct, and encourage more to do the same;
  - (d) Approve a new procedure rule stating that members must declare their interests if they arise during a meeting that they are attending and that if the interest is a disclosable one that they leave the room during its consideration, but that they can stay to speak as a member of the public (where a member of the public is permitted to speak) but must leave the room as soon as they have finished speaking as a member of the public;
  - (e) Approve the procedure for dealing with complaints of alleged breaches of the above code of conduct as attached at Appendix C to this report;
  - (f) Delegate to the Appeals Committee the responsibility to consider any complaints against members (of either the Isle of Wight Council or parish/town councils on the Island) where the investigating officer (in the circumstances that a complaint was referred for investigation) has concluded that a breach of the code of conduct has occurred. For Isle of Wight Councillors only to determine the appropriate sanction(s) from the following:
    - (1) Censure;
    - (2) Referral to the relevant group leader for action;

- (3) Publication of findings;
  - (4) Local resolution.
- (g) Approve the appointment (subject to the detailed regulations on process to be followed and any interim arrangements) of five Designated Independent Persons and delegate to the Monitoring Officer, in consultation with group leaders, the authority to appoint the initial Designated Independent Persons for up to one year and that those appointed receive an initial allowance of £301 per annum, this to be subject to the forthcoming review by the Independent Remuneration Panel and the stipulations set out in paragraph 18 of this report;
  - (h) Invite the Isle of Wight Association of Local Councils to appoint four parish/town councillors with whom the Monitoring Officer or Appeals Committee can consult when considering complaints against parish/town councillors;
  - (i) Delegate to the Appeals Committee the responsibility for dealing with requests for dispensations to enable members with interests to speak and vote on a matter;
  - (j) Formally disband the Ethical Standards Committee as from midnight on Friday 29 June and record the Council's thanks to the present and past members of that Committee for their work over the last 15 years;
  - (k) To agree different register of interests;
  - (l) To agree a different code of conduct;
  - (m) To agree a different procedure for dealing with complaints;
  - (n) To appoint a differing number of designated independent persons;
  - (o) To invite a differing number (or none) parish/town councillors to assist the Monitoring Officer and appeals committee with the process;
  - (p) To delegate the responsibility for dealing with complaints to another committee of the Council, or retain with Full Council itself;
  - (q) Whatever is agreed will come into full effect on 1 July 2012 subject to the detailed regulations (other than item (j) which will apply as from 29 June);
  - (r) That the Monitoring Officer, in consultation with group leaders, be delegated authority to make any further minor amendments to the proposed Code of Conduct, Register of Interests and the proposed procedure once the detailed regulations have been published.

## RISK MANAGEMENT

- 32. Implementing the recommendations within the report will ensure that the Council meets its statutory responsibility, and also has a code of conduct and



process for dealing with alleged breaches of the code. By basing these, as far as is possible, on the existing arrangements this will limit the risk of misunderstandings and the need for members and the public to learn and understand a completely new code.

33. The code and the new arrangements will be reviewed after the local elections next year to learn from the first year of the new process and best practice elsewhere.

## EVALUATION

34. The proposed recommendations meet all the requirements of the legislation whilst reducing the bureaucracy associated with the previous arrangements.

## RECOMMENDATIONS

35. Options a), b), c), d), e), f), g), h), i), j), q) and r) as follows:
- (a) Approve the new Register of Interest as attached at Appendix A to this report;
  - (b) Approve the new Code of Conduct as attached at Appendix B to this report;
  - (c) Welcome the adoption by the parish/town councils on the Island of the same Code of Conduct, and encourage more to do the same;
  - (d) Approve a new procedure rule stating that members must declare their interests if they arise during a meeting that they are attending and that if the interest is a disclosable one that they leave the room during its consideration, but that they can stay to speak as a member of the public (where a member of the public is permitted to speak) but must leave the room as soon as they have finished speaking as a member of the public.
  - (e) Approve the procedure for dealing with complaints of alleged breaches of the above code of conduct as attached at Appendix C to this report;
  - (f) Delegate to the Appeals Committee the responsibility to consider any complaints against members (of either the Isle of Wight Council or parish/town councils on the Island) where the investigating officer (in the circumstances that a complaint was referred for investigation) has concluded that a breach of the code of conduct has occurred. For Isle of Wight Councillors only to determine the appropriate sanction(s) from the following:
    - (1) Censure;
    - (2) Referral to the relevant group leader for action;
    - (3) Publication of findings;
    - (4) Local resolution.

- (g) Approve the appointment (subject to the detailed regulations on process to be followed and any interim arrangements) of five Designated independent Persons and delegate to the Monitoring Officer, in consultation with group leaders, the authority to appoint the initial Designated Independent Persons for up to one year and that those appointed receive an initial allowance of £301 per annum, this to be subject to the forthcoming review by the Independent Remuneration Panel and the stipulations set out in paragraph 18 of this report;
- (h) Invite the Isle of Wight Association of Local Councils to appoint four parish/town councillors with whom the Monitoring Officer or Appeals Committee can consult when considering complaints against parish/town councillors;
- (i) Delegate to the Appeals Committee the responsibility for dealing with requests for dispensations to enable members with interests to speak and vote on a matter;
- (j) Formally disband the Ethical Standards Committee as from midnight on Friday 29 June and record the Council's thanks to the present and past members of that Committee for their work over the last 15 years;
- (q) That the above be implemented (subject to the detailed regulations) as from 1 July 2012 (other than j) which will apply from 29 June);
- (r) That the Monitoring Officer, in consultation with group leaders, be delegated authority to make any further minor amendments to the proposed Code of Conduct, Register of Interests and the proposed procedure once the detailed regulations have been published.

#### APPENDICES ATTACHED

36. [Appendix A](#) - proposed new Register of Interests  
[Appendix B](#) - proposed new code of conduct  
[Appendix C](#) - proposed procedure for dealing with complaints

#### BACKGROUND PAPER

Initial equality impact assessment

Contact Point: Chris Mathews, Corporate Governance Manager and Deputy Monitoring Officer, ☎ 821000 e-mail [chris.mathews@iow.gov.uk](mailto:chris.mathews@iow.gov.uk)

DAVINA FIORE  
*Monitoring Officer*